

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHUTIMA UTHES SUTTON,) Case No. ED CV 11-424-PJW
Plaintiff,)
v.) MEMORANDUM OPINION AND ORDER
MICHAEL J. ASTRUE,)
COMMISSIONER OF THE)
SOCIAL SECURITY ADMINISTRATION,)
Defendant.)

)

I.

INTRODUCTION

This case is before the Court a second time, following an order of remand with directions to the Agency for further proceedings consistent with the Court's order. (Administrative Record ("AR") 327-40.) Plaintiff complains that, after the Court remanded the case, the Administrative Law Judge ("ALJ") failed to follow the Court's remand order. For the following reasons, the Court agrees. The ALJ's decision is reversed and the Agency is ordered to calculate an award of benefits for the closed period from October 30, 2003 to November 16, 2005. In addition, the ALJ is again ordered to explain the basis for his previous finding that Plaintiff was unable to work during the

closed period but was able to work thereafter despite the fact that
the ALJ found that Plaintiff's residual functional capacity remained
the same throughout the entire period.

II.

ANALYSIS

Because the Court has already issued a detailed decision explaining the facts and law in this case, see *Sutton v. Astrue*, ED CV 08-1659-PJW, (AR 327-40), it need not repeat them here. Suffice it to say that, after the ALJ issued a decision granting Plaintiff's application for disability insurance benefits for a closed period and denying benefits for the period that followed, Plaintiff appealed to this court alleging that the ALJ erred when he: 1) found that her medical condition had improved after November 16, 2005; 2) failed to properly consider her and her husband's testimony; and 3) used the "Grids" at step five. The Court agreed with Plaintiff in part and remanded the case to the Agency to allow the ALJ to: (1) explain how he determined that Plaintiff was unable to work during the closed period but could work thereafter despite the fact that the ALJ had determined that her residual functional capacity was the same before and after; and (2) reconsider Plaintiff's testimony and consider for the first time her husband's testimony. (AR 327-40.) The Agency chose not to appeal and, therefore, the Court's remand order was binding on the Agency.

24 On remand, the ALJ inexplicably reconsidered his decision that
25 Plaintiff was disabled during the closed period and this time found
26 that she was not. As a result, he denied her application for benefits
27 in toto. This was inconsistent with the order of remand and
28 constitutes error. See *Sullivan v. Hudson*, 490 U.S. 877, 885-886

1 (1989); see *Ischay v. Barnhart*, 383 F. Supp. 2d 1199, 1213-1217, 1224
2 (C.D. Cal. 2005) (holding under the law of the case doctrine and the
3 "broader" rule of mandate the ALJ abused his discretion by going
4 beyond the issue identified in the district court's remand order,
5 taking evidence on additional issues, "produc[ing] a third decision
6 out of whole cloth," and denying benefits on remand at step four when
7 the remand order did not authorize the ALJ "to disturb or revisit" his
8 step-four determination); see also *Ruiz v. Apfel*, 24 F. Supp. 2d 1045,
9 1050 (C.D. Cal. 1998) (remanding for further administrative proceed-
10 ings where the remand order "makes it very plain that the remand was
11 for a limited purpose," and there was "no basis for the ALJ to review
12 issues that had been determined in plaintiff's favor" and not
13 appealed). As the Supreme Court explained in *Sullivan*:

14 Where a court finds that the Secretary has committed a legal
15 or factual error in evaluating a particular claim, the
16 district court's remand order will often include detailed
17 instructions concerning the scope of the remand, the
18 evidence to be adduced, and the legal or factual issues to
19 be addressed. . . . Deviation from the court's remand
20 order in the subsequent administrative proceedings is itself
21 legal error, subject to reversal on further judicial review.

22 *Sullivan*, 490 U.S. at 885-86 (citations omitted).

23 The ALJ's decision is hereby reversed and the case is remanded to
24 the Agency for a calculation of benefits for the closed period. In
25 addition, the ALJ is again ordered to explain the basis for his
26 conclusion in 2007 that, based on Plaintiff's residual functional
27 capacity, she was unable to work from October 2003 to November 2005,

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1 but that, with the same residual functional capacity, she was able to
2 work thereafter.

3 As a result of the Court's ruling above, Plaintiff's second
4 issue--that the ALJ failed to properly consider the medical expert's
5 and the vocational expert's testimony at the second hearing--is moot.

6 The remaining issue raised by Plaintiff has to do with the ALJ's
7 credibility findings. He found that Plaintiff was not credible
8 because: she was not taking pain medication to deal with her alleged
9 severe pain; the record disclosed that she had exaggerated her claims
10 of pain; she was able to play golf despite claims of intolerable pain;
11 and the medical records did not support her claimed level of pain and
12 incapacity. (AR 320.)

13 The Court assesses this finding in light of the ALJ's obvious
14 effort to countermand the order of this Court. Even so, there is a
15 factual basis for each of his findings and the law supports the ALJ's
16 discounting of her testimony on these grounds. See *Rollins v.*
17 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (claimant's testimony
18 about her activities undermined her claims of disabling pain); *Meanel*
19 *v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (claimant's failure to
20 seek treatment for supposedly excruciating pain was proper basis for
21 rejecting her testimony); and *Burch v. Barnhart*, 400 F.3d 676, 681
22 (9th Cir. 2005) (ALJ can consider lack of medical evidence as a factor
23 in determining credibility). As such, the ALJ's finding that
24 Plaintiff was not credible is affirmed.

25 Plaintiff argues that the ALJ also erred when he rejected parts
26 of her husband's testimony. Again, the Court disagrees. As a lay
27 witness, the ALJ was only required to set forth reasons that were
28 germane to the husband for discounting his testimony. *Dodrill v.*

1 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). The ALJ noted that the
2 husband's statement that his wife regularly played golf and performed
3 numerous household chores was inconsistent with his other statements
4 that she suffered from disabling pain. (AR 320.) These reasons are
5 supported by the record and are germane to the husband's testimony.
6 Therefore, the ALJ's finding that parts of the husband's testimony
7 were not believable will not be disturbed.

III.

CONCLUSION

10 For the reasons set forth above, the ALJ's decision is reversed
11 and the case is remanded to the Agency for the limited purpose of:
12 (1) calculating Plaintiff's benefits for the closed period and
13 awarding those benefits; and (2) allowing the ALJ to explain how he
14 determined in 2007 that Plaintiff's disability prevented her from
15 working during the closed period but not thereafter despite the fact
16 that her residual functional capacity remain unchanged.

IT IS SO ORDERED.

DATED: January 12, 2012.

Patrick J. Walsh

PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE